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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JOSEPH W. TRESCH et al., Plaintiffs and Appellants, v. COUNTY OF SONOMA AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT BOARD OF DIRECTORS et al., Defendants and Respondents; JOHN BARELLA et al., Real Parties in Interest and Respondents.	A133472 (Sonoma County Super. Ct. No. SCV 249021)

I.

INTRODUCTION

This appeal arises from the adoption by a conservation district of a resolution interpreting an existing conservation easement to permit the establishment of a wildlife preserve on agricultural land. The preserve was proposed in the environmental impact report (EIR) prepared for a neighboring quarry project, as one potential means of mitigating the impact of the quarry on certain protected species. However, neither the conservation district's resolution nor the conditions attached to approval of the quarry's EIR actually required that the preserve be established. We hold that under these circumstances, adoption of the resolution interpreting the easement did not constitute

"approval of a project" within the meaning of the California Environmental Quality Act (CEQA) (Pub. Resources Code, §§ 21000 et seq.).[1] We therefore affirm the trial court's dismissal of appellants' petition challenging the resolution under CEQA, and seeking an injunction against the adoption of similar resolutions without prior CEQA review.

II.

FACTS[2] AND PROCEDURAL BACKGROUND

Under California law, counties may establish special districts for the purpose of preserving open space and agricultural land through the purchase of agricultural conservation easements restricting the development and use of privately owned land. (See § 5500 et seq. [formation of special districts]; § 10200 et seq. [California Farmland Conservancy Program Act]; § 10211 [defining agricultural conservation easements]; see also Civ. Code, § 815 et seq. [conservation easements].) The County of Sonoma Agricultural Preservation and Open Space District (the District) is one such conservation district.[3] Respondent County of Sonoma Agricultural Preservation and Open Space District Board of Directors (the District Board) manages the District. The members of the District Board consist, by law, of the members of the board of supervisors of respondent Sonoma County (the County), serving ex officio.[4]

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[1] All further statutory references are to the Public Resources Code unless otherwise noted.

[2] Because this appeal arises from an order sustaining a demurrer, we assume the truth of the facts stated in appellants' first amended petition for writ of mandate (the Petition), and base our decision on those facts, supplemented by facts of which we take judicial notice. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

[3] We have taken judicial notice, at the District's unopposed request, of the Sonoma County ballot measures passed in 1990 that established the District and provided for its funding.

[4] The District Board, rather than the District itself, was named as a respondent in the Petition, along with the County and its board of supervisors (County Board). Among these parties, only the District has filed a respondent's brief in this court. We will use the term District Respondents to refer collectively to the District, the District Board, the County, and the County Board. We need not and do not determine which of them were properly named as respondents in the Petition.

In 2001 or 2002, respondents John Barella and the John E. Barella and Andrea M. Barella Trust (collectively Barella) purchased a tract of land in Sonoma County consisting of a parcel containing a potential gravel quarry site (the Quarry Parcel), together with an adjacent parcel of 758 acres (the Easement Parcel). In 2004, the District paid Barella some $2.2 million in exchange for Barella's agreement to burden the Easement Parcel with a conservation easement (the Easement). The Easement prohibits the owner of the Easement Parcel from carrying out "any nonagricultural commercial or industrial activity or use" on the land.

After the District purchased the Easement, Barella divided the Easement Parcel into two separate parcels. Barella sold the western parcel (the Wilson property) to Ken and Clairette Wilson, who were not named in the petition and are not parties to this appeal. The eastern parcel (the Tresch property) was sold to appellants Joseph W. Tresch and Kathleen M. Tresch as trustees of the Joseph W. and Kathleen M. Tresch Revocable Trust (the Tresch parties).

In 2003, Barella submitted an application to the County to develop a gravel quarry (the Quarry) on the Quarry Parcel. Approval of the Quarry required a zoning change, a use permit, a reclamation plan, and an environmental impact report (EIR). A draft EIR for the Quarry was circulated in 2008. A proposed final EIR was released in October 2009, but at a hearing before the County's planning commission (the Planning Commission) in December, its approval was postponed, and the hearing was later rescheduled for April 1, 2010.[5]

On April 1, the Planning Commission recommended that the County Board approve the proposed final EIR, and approve a particular alternative described in the EIR as the environmentally superior alternative for development of the quarry. After the Planning Commission vote, however, larvae of the California tiger salamander (CTS), a federally designated endangered species, were discovered on the Quarry Parcel, at a location near the Easement Parcel. It was also discovered that the Quarry Parcel served

[5] All further references to dates are to the year 2010 unless otherwise noted.

as habitat for the California red-legged frog (CRLF), which is listed as threatened under federal law, and identified by the California Department of Fish and Game as a species of special concern.

In the wake of the discovery that the CTS and the CRLF (the protected species) lived on the Quarry Parcel, the County determined that the EIR for the Quarry had to be revised and recirculated. Ultimately, the County imposed conditions on its approval of the Quarry that required Barella to "implement measures to minimize and avoid take" of the CRLF, and to comply with the federal Endangered Species Act (16 U.S.C. § 1531 et seq.) with respect to the CTS.

On July 21, Barella's counsel wrote a letter to the District asking (among other things) that the Easement be clarified or amended "to allow, concurrent with grazing, 105 acres of the Easement [Parcel] to be utilized as a . . . preserve" (the Preserve) for the protected species. The letter explained that "[i]mprovements associated with the [P]reserve would consist primarily of expanding the size of an existing stock pond and constructing an additional stock pond, both of which could be used by cattle and as habitat for the two [protected] species." On August 12, Barella's counsel followed up on the earlier letter by indicating that one of the two owners of the Wilson property concurred in Barella's request. Neither of the owners of the Wilson property had any other involvement in the events at issue in this case.

On September 29, Barella's counsel wrote to the District again. The letter asked the District to "acknowledge that the preservation of [the protected species], in tandem with historic grazing activities, and the enhancement of historic grazing activities and species preservation through the construction of a .15 to .25 acre stock pond[,] are consistent and permitted uses under the [E]asement on the Wilson property." The letter also stated that the reason for the request was the possibility that approval of the Quarry might be conditioned on the improvement of an existing road to serve the Quarry, rather than the creation of a new access road across the Wilson property. Barella's counsel sent the County a similar letter on October 13, opining that "the existing terms of the [E]asement over the Wilson [property] allow species preservation in tandem with the

historic grazing operation"; acknowledging that the District staff did not agree; and contending that "at most a technical clarification of the existing [E]asement is needed."

On October 19, the County Board, acting as such and also as the District Board, held a public hearing on the EIR for the Quarry, the permit for the Quarry, and Barella's request for clarification of the Easement. At the conclusion of the hearing, the County Board tentatively voted to certify the EIR and approve the Quarry, but rejected the proposal to create an access route to the Quarry through the Wilson property. At the same meeting, the County Board and/or District Board declined to act on Barella's request for a clarification of the Easement to permit establishment of the Preserve on the Wilson property, and instead directed further staff consideration of the issue.

On October 28, an advisory committee to the District voted to recommend denial of Barella's request to establish the Preserve on the Wilson property. On November 9, the District's staff released a report concluding that the proposal to establish the Preserve was not consistent with the terms of the Easement, and should not be allowed without an amendment to the Easement's terms. However, the report indicated that creation of the Preserve would be acceptable if the Easement were amended, with the consent of all the owners of the Easement Parcel, and the Preserve were reconfigured.

On December 7, the District's general manager wrote to the District Board recommending that if the District Board wished to grant permission to establish the Preserve, it should require an amendment to the Easement rather than interpreting the existing Easement to permit the Preserve under its existing terms. Despite this recommendation, on December 14, the District Board passed Resolution No. 10-0925 (the Resolution) interpreting the Easement to allow the establishment of the Preserve, subject to certain conditions.

On the same date, the County Board cast final votes to certify the EIR for the Quarry, and to grant final approval to the Quarry project, subject to various conditions as to mitigation. The documentation for the Quarry and its EIR, as approved by the County

Board, did not include any interpretation or amendment of the Easement with regard to the establishment of the Preserve.[6]

On December 22, the District Respondents filed a notice with the clerk of the County stating that the Resolution was neither a discretionary act nor a project within the meaning of CEQA. Alternatively, the notice stated that the Resolution was exempt from CEQA because its purpose was to maintain the open space character of the Easement Parcel and to allow preservation and restoration of natural conditions, including plant and animal habitats.

Having exhausted their administrative remedies, appellants[7] filed a petition for writ of mandate in the Sonoma County Superior Court on January 26, 2011. This was followed by a first amended petition (the Petition), filed on March 25, 2011, which is the operative pleading for purposes of this appeal. The Petition pleaded two causes of action: one seeking a writ of mandate requiring the District Respondents to set aside their approval of the Resolution, based on an alleged violation of CEQA, and to prepare a new EIR for the Quarry, and the other for injunctive relief, seeking to enjoin the County Board and the District Board from adopting similar interpretations of similar conservation easements "to advantage other development projects" in the future, without considering their environmental impact under CEQA. The Barella parties were named in the Petition as real parties in interest, but the owners of the Wilson property were not made parties to the proceeding.

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[6] We take judicial notice that appellant Citizens Advocating for Roblar Rural Quality (CARRQ), an organization of local residents, filed a separate petition challenging the Board's approval of the Quarry project. (*Citizens Advocating for Roblar Rural Quality v. County of Sonoma* (Super. Ct. Sonoma County, 2011, No. SCV 248943).) However, we deny appellants' request that we take judicial notice of a particular order issued in that action on November 16, 2011, on the ground that the contents of that order are not relevant to the issues presented by this appeal.

[7] In addition to the Tresch parties, who own the eastern portion of the Easement Parcel, appellants include CARRQ and Kenneth and Nancy Mazzetta, who own land near the Easement Parcel and the proposed Quarry.

Barella and the District respondents each separately demurred to the Petition. On July 29, the trial court filed a 26-page order sustaining the demurrer without leave to amend, and entered a judgment dismissing the action. This timely appeal ensued.

III.

DISCUSSION

A. Order Sustaining Demurrer to CEQA Petition

1. Standard of Review and Applicable Legal Principles

Appellants' first contention on appeal is that the trial court erred in concluding that the Petition did not state a cause of action for violation of CEQA.[8] An appeal from an order sustaining a demurrer presents only questions of law, so we review the trial court's decision de novo. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) Here, the trial court sustained the District's demurrer to the CEQA cause of action on the ground that the District's adoption of the Resolution did not constitute approval of a project within the meaning of CEQA. Our first task on this appeal, then, is to assess de novo the correctness of this legal conclusion. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381-382 (*Muzzy Ranch*); *Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 984 ["Whether a particular activity constitutes a project in the first instance is a question of law"].)

CEQA generally prohibits governmental agencies from approving projects that have significant impacts on the environment without first completing the environmental review process, and either mitigating those impacts or finding mitigation to be infeasible and the impacts to be justified by overriding considerations. (§§ 21002, 21002.1, 21006, 21081.) CEQA defines a "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," and which is undertaken, financially supported, or permitted by a

[8] Appellants do not argue that the trial court erred in declining to grant them leave to amend the Petition a second time.

public agency. (§ 21065.) "An activity that is not a 'project' as defined in the Public Resources Code [citation] and the CEQA Guidelines [citation[9]] is not subject to CEQA. [Citation.]" (*Muzzy Ranch, supra*, 41 Cal.4th at p. 380.)

When an activity is a project for CEQA purposes, public agency actions constituting "approval" of the project must be made in compliance with CEQA. "Approval" of a project occurs when a public agency makes a discretionary decision " 'which commits the agency to a definite course of action in regard to a project,' " including " 'the issuance by the public agency of a discretionary contract . . . , permit, license, certificate, or other entitlement for use of the project.' " (CEQA Guidelines, § 15352; see *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 129 (*Save Tara*).) Where a public agency's action is limited to determining whether existing regulations have been complied with, the action is not discretionary for CEQA purposes. (CEQA Guidelines, § 15357.)

As Barella points out, the District's adoption of the Resolution, in and of itself, neither caused a direct physical change to the environment nor committed the District to any definite course of action. The Resolution, by its terms, does not commit the District or any other agency to approve any particular location, size, configuration, or improvements with regard to the Preserve. All it does is confirm that the terms of the Easement do not preclude the possibility that the Preserve, in some form, could be established on the Wilson property.

Appellants argue that the District's adoption of the Resolution nonetheless required compliance with CEQA on the following grounds: (1) the mitigation activity allowed under the Resolution is an integral component of the planned Quarry, and the

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[9] "The term 'CEQA Guidelines' refers to the regulations for the implementation of CEQA authorized by the Legislature [citation], codified in title 14, section 15000 et seq. of the California Code of Regulations, and 'prescribed by the Secretary for Resources to be followed by all state and local agencies in California in the implementation of [CEQA].' [Citation.] In interpreting CEQA, we accord the CEQA Guidelines great weight except where they are clearly unauthorized or erroneous. [Citation.]" (*Muzzy Ranch, supra*, 41 Cal.4th at p. 380, fn. 2.)

Quarry itself is unquestionably a project for CEQA purposes; (2) if the Resolution is not considered part of the Quarry project, Barella will be allowed to establish the Preserve without ever complying with CEQA; and (3) the Resolution has a reasonably foreseeable indirect impact on the environment due to the possibility that its adoption will set a precedent for the District to interpret other conservation easements to permit the use of the underlying land for the benefit of commercial projects. In assessing these arguments, we bear in mind, as we must, our Supreme Court's direction that "the Legislature intended [CEQA] 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' [Citation.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390; accord, *Muzzy Ranch, supra*, 41 Cal.4th at p. 381.)

2. Relationship of the Resolution to the Quarry Project

We turn first to appellants' argument that adoption of the Resolution constituted a project because it was an integral part of the overall approval of the Quarry. In so doing, we recognize that "CEQA's conception of a project is broad [citation], and the term is broadly construed and applied in order to maximize protection of the environment [citation]. This big picture approach to the definition of a project (i.e., including ' "the whole of an action" ') prevents a proponent or a public agency from avoiding CEQA requirements by dividing a project into smaller components which, when considered separately, may not have a significant environmental effect. [Citations.] That is, the broad scope of the term 'project' prevents 'the fallacy of division,' which is the 'overlooking [of a project's] cumulative impact by separately focusing on isolated parts of the whole.' [Citation.]" (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271.)

In addition, as already noted, because this appeal arises from an order sustaining a demurrer, we must assume the truth of the Petition's factual allegations. Thus, we assume that when the Board approved the EIR for the Quarry, it based its decision, in part, on the understanding that the terms of the Easement would not prevent establishment of the Preserve as a means of mitigating the effect of the Quarry on the protected species.

Critical to our analysis, however, is the fact that the conditions for the Quarry set forth in the EIR do not *require* the establishment of the Preserve. Rather, as to the CRLF, the conditions require only that Barella "minimize and avoid take" of the species, and obtain "formal consultation" with the United States Fish and Wildlife Service (USFWS) and "issuance of a project-specific [b]iological [o]pinion." As to the CTS, the conditions require that Barella comply with the federal and state laws protecting endangered species; consult with USFWS; if necessary, obtain a permit from the California Department of Fish and Game; and consult with the Army Corps of Engineers regarding compliance with the Clean Water Act with respect to the Quarry's impact on wetlands. Nothing in these conditions makes establishment of the Preserve inevitable, or (in the words of the CEQA Guidelines) "commits the [District Respondents] to a definite course of action in regard to" mitigating the Quarry's impact on the protected species. (CEQA Guidelines, § 15352.)

In short, while the Resolution clarifies that establishment of the Preserve is permissible in principle under the existing terms of the Easement, the Resolution neither requires nor permits any specific action, or any physical change to the Wilson property. Similarly, the conditions on the EIR for the Quarry leave it up to the federal and state agencies involved to determine what mitigation efforts will be needed in regard to the protected species. Thus, the conditions of the EIR for the Quarry neither included nor relied upon the District's interpretation of the Easement to permit the Preserve. Moreover, nothing in the record suggests that Barella cannot satisfy the conditions of the EIR as to the protected species without creating the Preserve, if there are other means of sufficiently mitigating the Quarry's effect on the protected species. Thus, both legally and as a practical matter, it is possible for the Quarry project to go forward even if the Preserve is never created.

The cases on which appellants rely are distinguishable on this basis. In *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, the main project was a landfill. The landfill's initial EIR was rejected because it did not adequately address the landfill's water requirements. The proponent of the landfill then

entered into a contract with the Olivenhain Municipal Water District (OMWD) to supply the landfill with a specified quantity of recycled water, which would be transported by truck. The OMWD did not conduct any environmental impact analysis before entering into the contract, and Riverwatch filed a petition for a writ of mandate to require the preparation of an EIR. The court held that the activity of trucking recycled water from OMWD to the landfill site, which would include expansion of a roadway, construction of a loading pad, and significant trucking activity, was part of the landfill project for purposes of CEQA. (*Id.* at pp. 1202-1205.)

In *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, the court held that the expansion of a wastewater treatment plant and the construction of connecting sewer lines were part of a set of housing development projects for CEQA purposes, because they were "crucial elements without which the proposed projects cannot go forward." (*Id.* at p. 732.) Similarly, in *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, the court held that an EIR for a proposed sand and gravel mine was inadequate because it ignored the mine's need for a water supply. The EIR was incomplete without that discussion, because it was clear that "the currently existing water delivery equipment cannot adequately supply the water needs of a sand and gravel mine," and "[a]dditional facilities [would] have to be built." (*Id.* at p. 829.)

In each of these cases, as the foregoing discussion demonstrates, an activity that was an essential element of a project, without which the project could not proceed, was held to be part of the project for CEQA purposes. Here, however, as already discussed, the District's adoption of the Resolution was not *necessary* in order for Barella to comply with the conditions of the Board's approval of the EIR. Nor did the Resolution *obligate* the District to permit the Preserve to be established on the Wilson property. Rather, the Resolution merely clarified that it would not be inconsistent with the existing terms of the Easement for the Preserve to be established, provided certain conditions were met. Barella has cited no authority holding that an activity is part of a project for CEQA purposes even if the project could have gone forward without the approval of that

activity. Accordingly, we are not persuaded that the passage of the Resolution was part of the Quarry project for CEQA purposes.

3. Evasion of CEQA Compliance

The Board's resolution approving the EIR for the Quarry did not include a requirement that CEQA review be conducted before any improvements associated with the Preserve could be constructed. Based on this omission, appellants argue that if the Resolution is not treated as part of the Quarry project, it is possible that the eventual construction of the Preserve-related improvements will evade CEQA review altogether. Appellants contend that in order to prevent this, the Preserve must be treated as part of the Quarry project for CEQA purposes.

In support of this argument, appellants rely on *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150 (*Cedar Fair*); *City of Santee v. County of San Diego* (2010) 186 Cal.App.4th 55 (*Santee*); *Citizens to Enforce CEQA v. City of Rohnert Park* (2005) 131 Cal.App.4th 1594 (*Rohnert Park*); and *Stand Tall on Principles v. Shasta Union High Sch. Dist.* (1991) 235 Cal.App.3d 772 (*Stand Tall*), disapproved in part in *Save Tara*, *supra*, 45 Cal.4th at pp. 132-134. Based on these cases, appellants contend that when an agency preliminarily agrees to a contemplated development project, the agency may forego CEQA review only if the parties expressly agree that CEQA review will be conducted at a later stage. Thus, appellants argue, the Resolution does not pass muster as a purely preliminary measure, because the Resolution does not expressly require future CEQA compliance before the improvements associated with the Preserve can be constructed.

An examination of the facts of the cited cases, however, demonstrates that they do not stand for the broad proposition that all preliminary agency activities regarding land use must be conditioned on later CEQA compliance. *Cedar Fair*, *supra*, 194 Cal.App.4th 1150, arose from a CEQA challenge to an agreement to negotiate in good faith, on specified terms, regarding the erection of a new professional football stadium. *Santee*, *supra*, 186 Cal.App.4th 55, involved the selection of proposed sites for the construction of a new prison. *Rohnert Park*, *supra*, 131 Cal.App.4th 1594, involved the potential

construction of a casino by an Indian tribe, and the tribe's agreement to fund related improvements for the adjacent city. *Stand Tall, supra,* 235 Cal.App.3d 772, involved the selection of a site for the construction of a new high school. As these brief summaries show, in all of these cases, it was clear from the nature of the proposed projects that CEQA compliance would be required before the projects could go forward. Accordingly, in holding that a preliminary step in the direction of the projects was not "approval of a project" under CEQA, the courts relied in part on the fact that the public agencies having jurisdiction to conduct CEQA review had committed themselves to performing it at a later stage.

Here, on the other hand, the District does not have general authority to regulate land use on property covered by conservation easements. Rather, the District's authority is limited to enforcing the easements it holds, by ensuring that particular uses of conserved land are consistent with the contractual terms of the governing easement. It is the County, through the County Board, that is ultimately responsible for ensuring that the development and use of privately owned land in the County—including land subject to conservation easements held by the District—is carried out in compliance with CEQA and other applicable state statutes. (Compare Civ. Code, § 815.7 [enforcement of conservation easements by injunction] with *Sierra Club v. Napa County Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 172 (*Sierra Club v. Napa*) [under California constitution, municipal entities such as counties have plenary authority to enact land use regulations and control their own land use decisions, subject to state law].) Thus, it would not have made sense for the Resolution, by its terms, to require a CEQA review process that the District has no authority to conduct.

Conversely, however, the District's decision that establishment of the Preserve would not be inconsistent with the terms of the Easement does not exempt the actual construction needed to create the Preserve from review by the County, as well as any other regulatory authority having jurisdiction. Thus, if and when the Preserve is actually established, the County and any other agencies whose discretionary permission is required for the construction of the related improvements will have an opportunity to

review the Preserve project. At that point, these entities will be required by CEQA to determine whether any CEQA exemption applies, and if not, to order that an EIR be prepared for the Preserve improvements.[10] If, on the other hand, the nature of the improvements is such that no discretionary approval from the County or any other agency is required prior to their construction, then CEQA will be inapplicable. In that event, no CEQA review would have been required in connection with the establishment of the Preserve, even if the Resolution had not been adopted. Accordingly, the District's adoption of the Resolution, in and of itself, neither resulted in the evasion of any CEQA review that otherwise would have been conducted, nor permitted the future construction of the Preserve in violation of applicable CEQA requirements.

4. Potential Indirect Environmental Impact

As already noted, appellants argue, in the alternative, that the Resolution was a project because of its potential use as precedent for the use of conservation property for the benefit of commercial projects. Appellants cite no authority, however, for the proposition that the potential precedential effect of an agency's interpretation of an existing legal instrument affecting land use constitutes an indirect environmental impact within the meaning of CEQA.

In any event, we are not persuaded by appellants' arguments. All the District did, in adopting the Resolution, was to determine that it would not be inconsistent with the terms of the Easement to establish the Preserve on a small portion of the Easement Parcel, while maintaining the overall historical use of the Easement Parcel as grazing land. Moreover, the Resolution provides that the only physical changes to the property

[10] As the trial court noted, creation of the Preserve could potentially fall within several categorical exemptions established under the CEQA Guidelines, such as section 15317 (exemption for establishment of open space and agricultural preserves) or section 15325, subdivisions (a) and (c) (exemption for transfers of land ownership made in order to preserve or allow restoration of animal habitats). Counsel for the District Respondents confirmed at oral argument in this court that if the Preserve is established and no CEQA exemption applies, CEQA review will be conducted in connection with the issuance of whatever discretionary permits are required for the construction of the Preserve improvements.

contemplated in connection with the establishment of the Preserve are the creation of one or more stock ponds, not to exceed half an acre in total size, and the erection of fences to exclude livestock from the habitat areas of the protected species. Significantly, these physical changes were already expressly permitted under the existing terms of the Easement. In addition, as already noted, the Resolution requires the owner of the Easement Parcel to obtain written permission from the District before actually constructing any new stock ponds, thus giving the District the opportunity to ensure that any actual physical changes to the Wilson property are carried out consistently with the terms of the Easement.

In short, nothing in the Resolution allows any use of the Wilson Property that is incompatible with the underlying intent of the Easement. Moreover, the Resolution does not permit any commercial use or development of the Wilson Property, and even expressly prohibits the sale of mitigation credits. Accordingly, appellants have not persuaded us that the District's adoption of the Resolution constituted approval of a project under CEQA because it set a precedent for the approval of the use of conservation property for the benefit of commercial development, or for any other use incompatible with the underlying purpose of conservation easements.

5. Discretionary Act

Appellants also argue that the adoption of the Resolution was a discretionary act. This argument begs the question, however. It is true that a public agency action must be discretionary in order for CEQA to apply. (*Sierra Club v. Napa*, *supra*, 205 Cal.App.4th at pp. 176-177.) If an action by a public agency does not constitute approval of a project for CEQA purposes, however, the fact that the action is discretionary, in and of itself, will not make CEQA applicable.

Numerous cases illustrate the principle that not all discretionary decisions related to land use are subject to CEQA. For example, in *Parchester Village Neighborhood Council v. City of Richmond* (2010) 182 Cal.App.4th 305, a city entered into a contract with an Indian tribe to provide municipal services to the tribe's proposed casino. The decision to agree to the contract was unquestionably discretionary. Nonetheless, the

court held that the city's entry into the agreement was not approval of a project for CEQA purposes, because the city did not unconditionally commit itself to making any related physical changes. In *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Assn. of Governments* (2009) 179 Cal.App.4th 113, the court held that the adoption of a retail sales and use tax to fund contemplated future transportation projects was not approval of a project. This result was reached even though the transportation projects themselves would ultimately require CEQA review. In *Baird v. County of Contra Costa* (1995) 31 Cal.App.4th 1265, modified at 33 Cal.App.4th 1464, the court held that CEQA review was not required in connection with a county's discretionary approval of a proposal to expand an existing residential treatment facility, because the expansion would not cause an adverse change in any physical conditions within the affected area. *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist*. (1992) 9 Cal.App.4th 464 held that the decision to form a community facilities district in anticipation of future school construction was not a project for CEQA purposes.

In short, we need not consider whether adoption of the Resolution was a discretionary action on the part of the District, or a ministerial one. Because the adoption of the Resolution, even if discretionary, did not constitute approval of a project for CEQA purposes, respondents' demurrer was properly sustained on the basis of appellants' failure to state a cause of action under CEQA.[11]

B. Dismissal of Cause of Action Seeking Injunction

The Petition included a second cause of action seeking to enjoin the District and the District Board from interpreting conservation easements similar to the one at issue in this case in such a way as to permit similar mitigation in order to benefit other development projects, without first complying with CEQA. The trial court dismissed this cause of action on the ground that the Petition had failed to name an indispensable party,

[11] Because we affirm the trial court's judgment on this ground, we need not reach the issue whether that court was correct in ruling that the Petition was not timely filed.

to wit, the owners of the Wilson property. Appellants contend this was error, arguing that approval of the Resolution was sought and obtained by Barella, not by Wilson, who merely concurred in Barella's request, and thus that Wilson was not an indispensable party.

We need not reach this issue. An injunction is a remedy, not a separate cause of action. (*Coachella Valley Unified School Dist. v. State of California* (2009) 176 Cal.App.4th 93, 125-126 [complaint seeking writ of mandate and declaratory relief based on same underlying facts did not state separate causes of action, but asked for different forms of relief; where facts alleged did not state cause of action for mandamus, declaratory relief was also unavailable]; *MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623 ["a cause of action must exist before injunctive relief may be granted"].) In the present case, appellants' prayer for injunctive relief was predicated entirely on their cause of action for violation of CEQA. We have concluded that the Petition's allegations did not state facts sufficient to plead such a cause of action, because the District's adoption of the Resolution did not constitute approval of a project within the meaning of CEQA. By the same token, appellants have not stated a valid claim for injunctive relief based on their contention that the District Respondents may adopt similar resolutions in the future. Accordingly, appellants' prayer for injunctive relief was properly dismissed, albeit on different grounds than those given by the trial court. (See *Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631 [appellate courts review trial court's rulings, not its rationale, and are not bound by trial court's reasoning].)

IV.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

_____
RUVOLO, P. J.

We concur:

_____
REARDON, J.

_____
BASKIN, J.*

* Judge of the Contra Costa County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.